



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Dockets No. FMCSA-2007-28043; FMCSA-2018-0140]

Hours of Service (HOS) of Drivers; American Pyrotechnics Assn. (APA); Request to Add New Members to Current APA Exemptions; Request for Comments

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemptions; request for comments.

SUMMARY: FMCSA announces that it has received an application from the American Pyrotechnics Association (APA) requesting exemptions from the Agency's hours-of-service (HOS) regulations for four new members: Celebration Fireworks, Inc., International Fireworks Mfg. Company, Inc., Johnny Rockets Display Company, and the Wald & Company All American Display Fireworks Company. The first exemption request is from the prohibition on driving commercial motor vehicles (CMVs) after the 14th hour after the driver comes on duty. APA requests this exemption to allow drivers employed by the four member companies to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. The second exemption request is from the HOS regulations that require a motor carrier to install and require each of its drivers to use an electronic logging device (ELD) to record the driver's HOS. APA requests this exemption to allow these same drivers employed by the four members to continue to use paper records of duty status (RODS) in lieu of an ELD during the designated Independence Day periods. If granted, these exemptions would terminate at the same time as the other 53 exempted APA member carriers. The original terms and conditions of the limited exemptions, that ensure a level of safety equivalent to, or greater

than, the level of safety achieved without the exemption, will be upheld by the four new members.

DATES: Comments are due no later than [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2007-28043 and FMCSA-2018-0140 using any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m.,

ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket numbers for this notice (FMCSA-2007-28043 and FMCSA-2018-0140), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail,

or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the respective docket number, “FMCSA-2007-28043” or “FMCSA-2018-0140” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2007-28043” or “FMCSA-2018-0140” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemptions

The APA reports that it is a national safety and trade association of the U.S. fireworks industry, representing manufacturers, importers, distributors, wholesalers, retailers, suppliers and professional display companies. APA has over 250 member companies. Along with their subsidiaries, APA's member-companies are responsible for nearly 90 percent of the fireworks manufactured, imported, distributed and professionally displayed in the United States.

APA requested HOS exemptions from the 14-hour rule and the ELD rule for four new members: Celebration Fireworks, Inc., DOT #1527687, International Fireworks Mfg. Company, Inc., DOT #385065, Johnny Rockets Display Company, DOT #1263181, and the Wald & Company All American Display Fireworks Company, DOT #87079. The exemptions for these APA carriers, if granted, would expire on July 8, 2020. Although this is less than the 5-year exemption period authorized by 49 U.S.C. 31315(b)(2), as amended by section 5206(a)(3) of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94, 129 Stat. 1312, 1537, Dec. 4, 2015), FMCSA believes that the interests of the APA members and the Agency would best be served by synchronizing the expiration dates of all such fireworks-related exemptions. The four new members would be subject to all of the terms and conditions in the original exemptions.

The CMV drivers employed by APA members are trained pyro-technicians who hold commercial driver's licenses (CDLs) with hazardous materials (HM) endorsements. They transport fireworks and related equipment by CMVs on a very demanding schedule during a brief Independence Day period, often to remote locations. After they arrive, the drivers are responsible for set-up and staging of the fireworks shows.

The APA has requested exemptions for the four new member companies because compliance with the current 14-hour rule in 49 CFR 395.3(a)(2) would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its members. To meet the demand for fireworks without the exemptions, APA states that its members would be required to hire a second driver for most trips. The APA advises that the result would be a substantial increase in the cost of the fireworks shows – beyond the

means of many of its members' customers – and that many Americans would be denied this important component of the celebration of Independence Day.

Additionally, APA is seeking exemptions from the ELD rule in 49 CFR 395.8(a)(1)(i) for these same members. APA asserts that granting this exemption is appropriate because there is no basis to believe that continuing to allow paper record keeping for this limited subset of the regulated community, and for a limited period of time, would impact operational safety in any regard. In addition, due to the unique nature of the fireworks industry, requiring the use of ELDs for this limited seasonal delivery period would impose a substantial financial burden on members because it would require them to purchase/lease systems for use for only a short period every year.

APA explained that members rely upon intermittent casual drivers periodically throughout the year and particularly during the busy Independence Day season when industry depends upon short-term rental trucks. The fireworks industry is unique in that it rents or leases approximately 90% of its vehicles throughout the year for fewer than 30 days at a time. However, most rental companies require a minimum rental period of 14 to 21 days when APA members may only use the trucks in commerce for up to 11 days. The mix of vehicles rented includes pick-up trucks, cargo vans, city vans and straight trucks less than 26,000 GVW. The industry relies heavily upon short-term rental trucks to transport and deliver 98% of the 16,000 Independence Day fireworks displays nationwide.

The APA believes that the exemptions would not adversely affect the safety of the fireworks transportation provided by these motor carriers. APA's members have operated under the exemption from the 14-hour rule for 12 previous Independence Day

periods without incident. Moreover, it asserts, without the extra time provided by the exemption from the 14-hour rule, safety would decline because APA drivers would be unable to return to their home base after each show. They would be forced to park the CMVs carrying HM 1.1G, 1.3G and 1.4G products in areas less secure than the motor carrier's home base. Without the exemption from the ELD rule, these companies would be required to purchase/lease ELD systems for a limited period of 11 days.

APA asserts that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before July 4, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks display, and normally do so in the early morning when traffic is light. At the site, they spend considerable time installing, wiring, and safety-checking the fireworks displays, followed by several hours off duty in the late afternoon and early evening prior to the event. During this time, the drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day.

Method to Ensure an Equivalent or Greater Level of Safety

Before beginning another duty day, drivers must take 10 consecutive hours off duty.

Drivers are off duty for several hours in the late afternoon and early evenings, prior to an event. Additionally, these members would continue to use paper RODS in lieu of an ELD during the designated Independence Day periods.

Terms and Conditions of the Exemption

Period of the Exemption

The requested HOS exemptions from 49 CFR 395.3(a)(2) and 49 CFR 395.8(a)(1)(i) would be effective from June 28 through July 8, at 11:59 p.m. local time, each year through 2020.

Terms and Conditions of the Exemptions

During the 2019 Independence Day period, the exemptions from 49 CFR 395.3(a)(2) and 49 CFR 395.8(a)(1)(i) would be limited to drivers employed by the 53 motor carriers already covered by the exemptions, plus (if approved) the four carriers now seeking these exemptions. Section 395.3(a)(2) prohibits a driver from driving a CMV after the 14th hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Section 395.8(a)(1)(i) requires drivers of motor carriers subject to the rule to use ELDs to record their HOS. Drivers covered by these exemptions would be able to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. The exemptions would be contingent on the following:

- Drivers do not drive more than 11 hours in the 14-hour period after coming on duty, as extended by any off-duty or sleeper-berth time in accordance with this exception.
- Drivers must have 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period.
- Drivers must use paper RODs
- The carriers and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399) and Hazardous Materials Regulations (49 CFR parts 105-180).

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period these exemptions would be in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with the exemptions with respect to a firm or person operating under the exemptions. States may, but are not required to, adopt the same exemptions with respect to operations in intrastate commerce.

FMCSA Notification

Exempt motor carriers would be required to notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of their CMVs while under these exemptions. The notification must be by email to MCPSD@DOT.GOV and include the following information:

- a. Name of the Exemption: “APA”
- b. Date of the accident,
- c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- d. Driver’s name and driver’s license State, number, and class,
- e. Co-Driver’s name and driver’s license State, number, and class,
- f. Vehicle company number and power unit license plate State and number,
- g. Number of individuals suffering physical injury,
- h. Number of fatalities,
- i. The police-reported cause of the accident,
- j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and

- k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to MCPSD@DOT.GOV as soon as available.

Issued on: April 11, 2019.

Larry W. Minor
Associate Administrator for Policy

[FR Doc. 2019-07783 Filed: 4/17/2019 8:45 am; Publication Date: 4/18/2019]